BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

HARVEY LEE SHIRLEY Claimant	}
VS.	Dookst No. 165 625
VULCAN MATERIALS COMPANY Respondent Self-Insured) Docket No. 165,635

ORDER

Claimant appeals the Post-Award Order of Administrative Law Judge John D. Clark entered in this proceeding on May 23, 1995.

ISSUES

An Award was initially entered in this proceeding on July 20, 1994. Thereafter, claimant requested authorization to seek additional medical care and treatment. As a result of the hearing held on May 23, 1995, the Administrative Law Judge ordered respondent to pay claimant attorney fees of fifty dollars (\$50.00) for work expended in this post-award request. The claimant requested the Appeals Board to review the amount of attorney fees granted. That is the sole issue now before this Board.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

- (1) Because the issues in the post-award request for additional medical treatment have been settled, the Appeals Board has jurisdiction to review this matter as a final order of an Administrative Law Judge pursuant to K.S.A. 1991 Supp. 44-551.
- (2) The Order of the Administrative Law Judge should be modified. Both parties spent considerable time in this matter as claimant's request for additional medical treatment slowly inched its way through the procedural tunnel to preliminary hearing. A review of the entire file indicates claimant's request to the Administrative Law Judge for three hundred dollars (\$300) in attorney fees for over three (3) hours of time is fair and reasonable and in line with the customary charges of the locality for similar services.

An attorney is entitled to reasonable attorney fees for services rendered in connection with an application for additional medical benefits filed subsequent to the ultimate disposition of the initial and original claim under the provisions of K.S.A. 1991 Supp. 44-536(g). The statute provides the attorney shall be awarded fees on the basis of the reasonable and customary charges in the locality.

Although the respondent may argue the issue could have been resolved with one (1) phone call, it was not. Phone calls were made, a benefit review conference was held and claimant still did not have permission to seek additional medical treatment. Although claimant had been advised he would receive permission for additional medical care by contacting the company nurse, when he did so he was advised he needed to talk to his supervisor. As instructed, claimant then approached his supervisor who advised him he needed to check it out and that he would get back to him. Claimant finally received permission for additional medical treatment the day before the hearing. Under the circumstances presented, claimant's attorney was justified in proceeding with the process to obtain a hearing before the Administrative Law Judge.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge John D. Clark entered in this proceeding on May 23, 1995 should be, and hereby is, modified to grant claimant's attorney three hundred dollars (\$300) in attorney fees for this post-award matter.

IT IS SO ORDERED.
Dated this day of September 1995.
BOARD MEMBER
BOARD MEMBER
BOARD MEMBER

c: Steven R. Wilson, Wichita, KS John B. Rathmel, Overland Park, KS John D. Clark, Administrative Law Judge Philip S. Harness, DirectorENDFIELD